

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Cellular South Licenses, Inc.)	CC Docket No. 96-45
Petition for Designation as an)	
Eligible Telecommunications)	
In the State of Alabama)	

**Supplement To Petition For Designation As An
Eligible Telecommunications Carrier in the State of Alabama**

Cellular South Licenses, Inc. (“Cellular South”), an eligible telecommunications carrier in Alabama, hereby provides the Commission with additional information in connection with its above-referenced petition for ETC status in the state of Alabama¹, as requested by the Commission, through its Wireline Competition Bureau (“WCB”)². The WCB granted Cellular South’s petition some 18 months ago and since then Cellular South has been operating as an ETC within its designated service area. The company has used high-cost support to construct substantial additional facilities and has responded to all consumer requests for service as required by law. The company is today improving wireless infrastructure to advance universal service in rural Alabama to the benefit of consumers. Cellular South firmly believes that the grant of ETC designation should not be disturbed.

¹ *Cellular South Licenses, Inc.*, CC Docket No. 96-45 (June 4, 2002) (“Petition”).

² *Parties Are Invited to Update the Record Pertaining to Pending Petitions for Eligible Telecommunications Carrier Designations, Public Notice*, CC Docket No. 96-45, DA 04-999 (rel. Apr. 12, 2004).

I. INTRODUCTION

In its recent Notice, the WCB afforded an opportunity for parties to “update the record” with respect to pending petitions for eligible telecommunications carrier (“ETC”) status.³ Specifically, parties were invited to supplement their petitions with “any new information or arguments they believe relevant” given the “new standards and requirements” set forth in *Virginia Cellular* and *Highland Cellular*.⁴

As an initial matter, Cellular South notes that the “new standards and requirements” referenced in the Notice were adopted in an adjudicatory proceeding rather than through appropriate rulemaking channels. The Commission’s ad hoc adoption of new rules and reversal of precedent have prompted multiple interested parties to file petitions for reconsideration of both *Virginia Cellular* and *Highland Cellular*. Cellular South was not on notice that those orders would result in new rules, and thus had no real opportunity to participate in the proceeding that led to their adoption. Any final order that reverses any portion of Cellular South’s ETC grant based on these new standards would therefore be procedurally infirm and unfair to Cellular South.

Cellular South was granted ETC status in Alabama on December 4, 2002.⁵ As the information provided herein describes, Cellular South has been actively utilizing the Universal Service Fund support it receives as a result of that designation to better serve Alabama consumers.

³ Notice at p. 1.

⁴ *Id.* at p. 2, citing, *Virginia Cellular, LLC, Memorandum Opinion and Order*, FCC 03-338 (rel. Jan. 22, 2004), *recon. pending.* and *Highland Cellular, Inc., Memorandum Opinion and Order*, FCC 04-37 (rel. April 12, 2004), *recon. pending.*

⁵ *Cellular South License, Inc.*, DA 02-3317 (W.C.B. rel. Dec. 4, 2002).

Since its ETC grant in 2002, Cellular South has completed 44 cell sites in its designated ETC service area. In addition, since being granted ETC status, the company has completed an upgrade of the technology used on its cell sites to a next generation CDMA 1X system.

The upgrade to a next generation CDMA 1X system delivers improved voice quality and system capacity, as well as the capability for customers to access advanced features throughout the Cellular South network. The company has invested approximately \$9 million in its Alabama ETC service area since its designation as an ETC. The most recent upgrade to CDMA 1X also allows the company to comply with the government mandated E911 phase 2 requirements when the local public safety organizations upgrade their systems.

Over the next 18 months, the company has plans to add an additional 7 – 10 new sites in its ETC service area. These projected new sites are planned for the areas described in the attached Exhibit A. These plans will be further developed over the coming months and the exact locations of future cell sites are subject to change as the company completes its engineering studies.

Cellular South submits that it would be inappropriate to apply the Commission's changed standards retroactively to a grant of ETC status that was made nearly eighteen months ago. In reliance on its grant of ETC status and its mandate to use high-cost support to improve rural infrastructure in rural Alabama, Cellular South has invested all of the support it has received into network upgrades that have benefited Alabama's rural consumers, and more. These consumers would be harmed by an interruption in this critical source of funding.

Notwithstanding its objection to the manner in which the new standards were adopted, Cellular South is pleased to provide information outlining its commitments. Should the Commission revisit its grant of ETC status to Cellular South under the *Virginia Cellular* and

Highland Cellular standards, Cellular South believes that the record -- particularly as updated below -- demonstrates that Cellular South easily meets the Commission's "more stringent public interest analysis" for competitive ETC designations in rural areas.⁶

II. SUPPLEMENT IN RESPONSE TO PUBLIC NOTICE

A. Service Area Redefinition Analysis.

Cellular South's original petition requested and the Commission granted ETC status in a portion of the Butler Telephone Company's Butler wire center. Based on Cellular South's review of its ETC service area, Cellular South can commit to provide service throughout the entirety of the Butler wire center. Accordingly, should the commission overturn the WCB's decision and require service throughout the Butler wire center, Cellular South respectfully requests the Commission to designate Cellular South throughout the Butler wire center.

B. Statement Regarding Causes of Increases in Fund Size.

The impact of Cellular South's designation as an ETC in Alabama on the size of the USF has been negligible. In *Virginia Cellular*, the FCC concluded that the petitioner's projected support, which would amount to 0.105 percent of the total high-cost support to all ETCs, "will not dramatically burden the universal service fund".⁷ Cellular South's projected support will have an even smaller impact, making up less than .003 percent of all high-cost support.⁸ This minimal cost is by far outweighed by numerous public interest benefits that are and will continue to accrue to Alabama consumers as a result of Cellular South's designation. These benefits,

⁶ *Virginia Cellular* at ¶ 4.

⁷ *Id.* at ¶ 31.

⁸ This estimate is based on Cellular South's projected support of \$9,161 per month, measured against \$315,455,519 per month in high-cost support to all carriers, as shown on USAC's web site at: <http://www.universalservice.org/overview/filings/2004/Q3/default.asp>.

including improved health and safety, mobility, wider local calling areas, competition, improved infrastructure, were promised in Cellular South's petition and they are being delivered today.

C. Non-rural Public Interest Statement.

Because the record – both prior to the ETC grant and as supplemented herein – demonstrates that its designation serves the public interest in rural areas, it is axiomatic that Cellular South's grant in areas served by non-rural telephone companies in Alabama has and will continue to serve the public interest. Accordingly, Cellular South does not herein provide any additional argument concerning the Commission's recent pronouncement in *Virginia Cellular* that it may not always be in the public interest to designate a competitive ETC in non-rural areas.⁹

D. Specific Virginia Cellular Commitments

1. CTIA's Consumer Code for Wireless Services.

In its *Virginia Cellular* decision, the Commission noted the petitioner's commitment to abide by the CTIA's Consumer Code for Wireless Services.¹⁰ Should the Commission overturn

⁹ Until *Virginia Cellular*, the Commission had consistently and correctly held that it is *per se* in the public interest to designate competitive ETCs in non-rural areas upon a finding that the applicant satisfies the requirements of Section 214(e)(1). See, e.g., *Corr Wireless Communications, LLC*, DA 02-2855 at ¶ 12 (WCB rel. Oct. 31, 2002) ("*Corr Wireless*"); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, DA 02-1252 at ¶ 13 (WCB rel. May 24, 2002) ("*Pine Belt*"); *Cellco Partnership d/b/a Bell Atlantic Mobile*, DA 002895 at ¶ 14 (CCB rel. Dec. 26, 2000) ("*Cellco*"). We believe the Commission's statement in the *Virginia Cellular* that designation in such circumstances will not "necessarily be in the public interest in every instance" directly contradicts the language in Section 214(e)(6). The inclusion of the boilerplate phrase "consistent with the public interest, convenience and necessity" in the statute clearly does not amount to an extension of the public interest analysis to non-rural areas, as such a reading would render meaningless the distinction between "may" and "shall." See *Anderson v. Yungkau*, 67 S.Ct. 428, 485 (1947) ("[W]hen the same [statutory provision] uses both 'may' and 'shall', the normal inference is that each is used in its usual sense -- the one act being permissive, the other mandatory.")

¹⁰ http://www.wow-com.com/pdf/The_Code.pdf

the WCB's decision, Cellular South shall commit to abide by the CTIA Consumer Code for Wireless Services, as it may be amended from time to time, for all of its operations in Alabama.

2. Consumer Complaint Reporting.

In *Virginia Cellular*, the Commission required the petitioner to file with the Commission an annual report of its customer complaints. Cellular South hereby commits to do the same. Cellular South fully supports the Commission's efforts to collect service quality data that will permit it to develop meaningful service quality rules, to the extent necessary. If designated, Cellular South shall provide the FCC with an annual report providing the number of consumer complaints per 1,000 handsets in service. This, together with the aforementioned promise to abide by the CTIA Consumer Code, provides strong "evidence of [Cellular South's] commitment to high service quality." *Virginia Cellular* at ¶ 30.

Collection of quality of service data is consistent with the Commission's determination in 1997 to monitor service quality standards so that rules may be developed if trends in service quality reveal the need for regulation.¹¹ Cellular South believes that collection of data on customer complaints of all CMRS carriers, irrespective of their status as ETCs, will enable the Commission to determine whether rules should be adopted, and encourages the Commission to collect such data from all CMRS carriers operating in Alabama.

Based on our review of comments filed in the ongoing Joint Board proceeding in CC Docket No. 96-45, we are constrained to note that some parties have launched a misguided attack on competitive ETCs ("CETCs") over the past year, claiming that competitive neutrality requires all ETCs to have similar regulatory obligations, including service quality standards similar to

¹¹ *Federal-State Joint Board on Universal Service, Report and Order*, 12 FCC Rcd 8776, 8857-8 (1997).

those applicable to ILECs. This view was squarely rejected by the Commission in 1997 when it ruled:

Several ILECs assert that the Joint Board's recommendation not to impose additional criteria is in conflict with its recommended principle of competitive neutrality because some carriers, such as those subject to COLR obligations or service quality regulation, perform more burdensome and costly functions than other carriers that are eligible for the same amount of compensation. The statute itself, however, imposes obligations on ILECs that are greater than those imposed on other carriers, yet section 254 does not limit eligible telecommunications carrier designation only to those carriers that assume the responsibilities of ILECs.

In view of the fact that service quality rules were not enacted as a *quid pro quo* for ILECs being designated as ETCs, Cellular South believes such rules are more properly imposed to protect consumers from monopoly business practices. The discipline that is applied by robust marketplace competition is far preferable to regulation. Introduction of effective competition will lessen the need for full monopoly regulation on ILECs in Alabama.

While the Joint Board has recommended that some level of service quality standards be applied to all ETCs, Cellular South is pleased to note that the Board recognized that new requirements in the course of an ETC designation proceeding should not be imposed "for parity's sake". Rather, requirements should be imposed on ETCs only to the extent necessary to further universal service goals, including the provision of high-quality service throughout the designated service area."¹²

If service quality is a problem for wireless carriers, then the problem is best addressed in a rulemaking proceeding of general applicability wherein all interested parties and stakeholders

¹² *Federal-State Joint Board on Universal Service, Recommended Decision*, FCC 04 J-1 (Jt. Bd. rel. Feb. 27, 2004).

may participate. This Commission is permitted to adopt necessary rules to advance the goals of universal service and see that consumers receive high quality services as mandated by the Act.

Cellular South believes its customer service to be superior to its wireless and wireline competition. It looks forward to providing the Commission with the requested data and to participating in any rulemaking proceedings which address this important issue.

3. Service Provisioning Commitment.

As an ETC, Cellular South must take on competitively-neutral federal carrier of last resort obligations which require the company to provision service to all consumers reasonably requesting service within its ETC service area.¹³ Upon review of service provisioning commitments approved by the FCC and state commissions,¹⁴ Cellular South is pleased to make the following commitment to provision service to requesting customers:

In response to such requests for service at a residence or business, Cellular South will take the following steps:

1. If a request comes from a customer within its existing network, Cellular South will provide service immediately using its standard customer equipment.

2. If a request comes from a customer residing in any area where Cellular South does not provide service, Cellular South will take a series of steps to provide service.

* First, it will determine whether the customer's equipment can be modified or replaced to provide acceptable service.

¹³ See *Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission, Declaratory Ruling*, 15 FCC Rcd 15168 at ¶ 17 (2000) (Aug. 10, 2000) ("A new entrant, once designated as an ETC, is required, as the incumbent is required, to extend its network to serve new customers upon reasonable request").

* Second, it will determine whether a roof-mounted antenna or other network equipment can be deployed at the premises to provide service.

* Third, it will determine whether adjustments at the nearest cell site can be made to provide service.

* Fourth, it will determine whether there are any other adjustments to network or customer facilities which can be made to provide service.

* Fifth, it will explore the possibility of offering the resold service of carriers that have facilities available to that location.

* Sixth, Cellular South will determine whether an additional cell site, a cell-extender, or repeater can be employed or can be constructed to provide service.

If there is no possibility of providing service short of these measures, Cellular South will notify the customer and provide the Commission with an annual report of how many requests for service could not be filled. The Commission will retain authority to resolve any customer complaints that Cellular South has refused to respond to a reasonable request for service. Consistent with *Virginia Cellular*, Cellular South believes these service provisioning commitments will ensure that the company is responsive to consumers' needs while acting as a proper steward of available high-cost support funds. *See Virginia Cellular* at ¶ 46.

4. Construction Plans.

In *Virginia Cellular*, the carrier provided plans for using high-cost funds to improve its facilities and reach out to areas that it does not currently serve.¹⁵ As discussed above, Cellular

¹⁴ *See, e.g., Virginia Cellular, supra; Highland Cellular, Inc., Recommended Decision* (West Virginia), Case No. 02-1453-T-PC (Sept. 15, 2003); *Alaska DigiTel, LLC* (Alaska), Docket U-02-39, Order No. 10 (Aug. 28, 2003).

¹⁵ *See Virginia Cellular* at ¶ 16.

South has already shown that it is dedicated to using high-cost support to upgrading its network and expanding service coverage in its ETC service area. Now, consistent with *Virginia Cellular*, Cellular South is pleased to provide additional commitments going forward. Cellular South provides this information with the understanding that, in the absence of a specific request for service, general consumer demand often shifts which can cause a planned cell site to be relocated.¹⁶ In connection with its annual certification, Cellular South will also provide the Commission with information on how high-cost support funds are used so that any changes in construction plans can be properly explained.¹⁷

Within the first 18 months following the filing of this supplement, Cellular South plans to construct 7 – 10 new cell sites to expand and improve service in rural, high-cost areas. Because of periodic shifts in demand that may occur, Cellular South notes that the specific locations of its planned sites may change. The planned locations and facilities are set forth in the attached Exhibit A. Those areas are particularly rural and are lacking in high-quality telecommunications providers. In addition to this commitment, Cellular South will examine on an ongoing basis whether additional ‘fill-in’ facilities need to be constructed to reach unserved subscribers.

5. Advertising Commitment.

Cellular South specifically commits to continue to advertise the availability of its services throughout its ETC service area. The company will provide notices at local unemployment, social security and welfare offices so that consumers who may not have telephone service can learn about Cellular South’s service and that Lifeline and Link-up discounts are available. In addition, the company commits to locally publicize the construction of all new facilities in

¹⁶ *Id.*

¹⁷ See *Virginia Cellular* at ¶ 46.

unserved or underserved areas so that consumers understand that the new facilities provide improved service in their area of interest.¹⁸

III. CONCLUSION

Cellular South believes that the WCB properly decided this case and that the FCC should affirm the *Order* in its entirety. Should the Commission review the WCB's decision under Virginia Cellular, Cellular South requests that the information set forth above, as requested by the Commission in its Public Notice, be taken into consideration.

Should you have any questions or require any additional information, please contact undersigned counsel directly.

Respectfully submitted,

Cellular South Licenses, Inc.

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¹⁸ See *Virginia Cellular* at ¶ 25.